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OFFICE OF PETITIONS

In re Application of :
Humphries, et al. :
Application No.: 10/758,769 : ON PETITION
Filed: January 16, 2004 :
Attorney Docket No: SKY 03008 :

This is in response to the petition under 37 CFR 1.137(b) filed September 4, 2007.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition" under 37 CFR 1.137(b)."

This application became abandoned for failure file timely and proper response to the final Office action mailed July 18, 2006, which set a shortened statutory period for reply of three months from its mailing date. Extensions of the time set for reply were available pursuant to 37 CFR 1.136(a). A response was not received within the allowable period and the application became abandoned on October 19, 2006. A Notice of Abandonment was mailed on March 19, 2007.

Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed. In a non-provisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee, or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.
- (2) the petition fee as set forth in 37 CFR 1.17(m);
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and
- (4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

The instant petition does not satisfy the requirements of item (1) above.

As to item (1) above, Examiner Richard Franklin has determined that the response filed September 4, 2007, does not place the application in condition for allowance¹. The petition must be dismissed because of the lack of a proper response to the final Office action mailed July 18, 2006. The renewed petition must be accompanied by a proper response to the final Office action, which may include an amendment that places the application in condition for allowance or Request for Continued Examination under 37 CFR 1.114. Questions regarding the determination of the sufficiency of the reply filed November 16, 2006, should be directed to Examiner Franklin.

The address cited on the petition differs from the address of record. Although a courtesy copy of this decision is being mailed to the address cited on the petition. All future correspondence will be mailed solely to the address of record until appropriate written instructions to the contrary are received.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petitions
Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

By facsimile:

(571) 273-8300
Attn: Office of Petitions

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3222.



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Office of Petitions

Cc:

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¹ Examiner Franklin has indicated that the amendment does not place the application in condition for the allowance because amendments to independent claims 18 and 15 would require further search and consideration.